

Short Title: Will/Correct Mistake/Achieve Tax Objective.

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE JUDICIAL REFORMATION OF WILLS TO CORRECT  
MISTAKES AND THE JUDICIAL MODIFICATION OF WILLS TO ACHIEVE THE  
TESTATOR’S TAX OBJECTIVES AND TO AUTHORIZE THE CLERK OF  
SUPERIOR COURT TO ASSESS A FEE FOR THE FILING OF APPLICATION FOR  
REFORMATION OR MODIFICATION OF A WILL.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 31 of the General Statutes is amended by adding a new Article to  
read:

“Article 10.

“Reformation or Modification of Wills.

**“§ 31-61. Reformation of a will to correct mistakes.**

If the terms of a will are ambiguous, the court may reform the terms of the will to  
conform the terms to the testator’s intent if it is proved by clear and convincing evidence what  
the testator’s intent was and that the terms of the will were affected by a mistake of fact or law,  
whether in expression or inducement.

**“§ 31-62. Modification of a will to achieve the testator’s tax objectives.**

The court may modify the terms of a will in a manner that is not contrary to the testator’s  
probable intent to achieve the testator’s tax objectives. The court may provide that the  
modification has retroactive effect.

**“§ 31-63. Filing of action for reformation or modification of a will.**

(a) An action for reformation or modification of a will under this Article shall be filed in the superior court division of the General Court of Justice within three years of the date of probate of the will.

(b) The personal representative is a necessary party to an action commenced under this Article.

**SECTION 2.** G.S. 28A-2-4(c) reads as rewritten:

“(c) Without otherwise limiting the jurisdiction of the Superior Court Division of the General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection (a) or (c) of this section of the following:

- (1) Actions by or against creditors or debtors of an estate, except as provided in Article 19 of this Chapter.
- (2) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.
- (3) Caveats, except as provided under G.S. 31-36.
- (4) Proceeding to determine proper county of venue as provided in G.S. 28A-3-2.
- (5) Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).
- (6) Actions for reformation or modification of wills under Article 10 of Chapter 31 of the General Statutes.”

**SECTION 4.** This act becomes effective [insert proposed effective date], and applies to estates of decedents dying before, on, or after that date.